

**IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

SAMATHIS MCELROY,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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CIVIL ACTION NO.: 4:22-cv-828

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE PRESIDING:

NOW COMES Plaintiff, SAMATHIS MCELROY, and files this her Original Complaint for cause of action against Defendant, UNITED STATES OF AMERICA, and in support thereof would respectfully show the Court as follows:

A. PARTIES

1. Plaintiff SAMATHIS MCELROY is an adult citizen of the State of Texas and a domiciliary of Tarrant County, Texas.
2. Defendant, UNITED STATES OF AMERICA, may be served by delivering a copy of the summons and of the complaint by certified mail to the United States Attorney for the Northern District of Texas and by delivering a copy of the summons and of the complaint by certified mail to the Attorney General of the United States of America.

B. JURISDICTION

3. This Court has original subject matter jurisdiction over this case pursuant to 28 U.S.C. §1346(b), because the suit involves a tort claim against the United States

for damages and other related relief based on negligent and wrongful conduct by an employee, acting within the course of scope of employment, of the United States Postal Service, which is a department of the United States (see 38 U.S.C. § 201), resulting in an automobile collision.

C. VENUE

4. Venue is proper in this district under 28 U.S.C. §1402(b) because Plaintiff resides in this district and because the acts and omissions complained of occurred in this district.

D. CONDITIONS PRECEDENT

5. On or about October 14, 2021, Plaintiff timely presented notice of claim in writing to the United States on Standard Form 95 as promulgated by the United States Department of Justice pursuant to 28 C.F.R. § 14.2. On or about November 23, 2021, a Tort Claims Examiner with the National Tort Center of the United States Postal Service acknowledged timely receipt of the written claim form submitted by and on behalf of Plaintiff. The United States Postal Service did not make a determination on the claim within six-months of notice of the claim, which would have been on or before April 14, 2022. This suit is commenced within six months of denial of the claim pursuant to 28 U.S.C. 2401(b).

E. FACTUAL BASIS OF CLAIMS

6. On February 28, 2020, Plaintiff sustained personal injuries when her motor vehicle was struck by a motor vehicle operated by an employee of the United States Postal Service who was in the course and scope of employment at the time of the collision.
7. The collision occurred on Shorewood Drive in Arlington, Tarrant County, Texas.

As Plaintiff was traveling along Shorewood Drive, the United States Postal Service employee, who had his vehicle pulled off on the right side of the roadway, suddenly and without warning pulled into Plaintiff's lane of travel and colliding with Plaintiff's vehicle.

8. As a proximate result of the collision, Plaintiff sustained injuries to her left knee, neck, and low back. As part of the treatment for Plaintiff's injuries, Plaintiff underwent surgery on her left knee, received cervical and lumbar epidural steroid injections, and underwent an anterior and posterior lumbar interbody fusion with cage, pedicle screws and rods at the L3 through L5 section of her lumbar vertebrae.
9. Plaintiff has sustained permanent physical impairment to her back and permanent disfigurement to her body as a result the acts and/or omissions of the employee of the United States Postal Service.

F. FEDERAL TORT CLAIMS ACT

10. The acts and/or omissions of the United States Postal Service employee were negligent.
11. The United States Postal Service employee had a duty to exercise ordinary care and operate his vehicle in a reasonable and prudent manner. Under the laws of the State of Texas, a private person would be liable to Plaintiff for this act. Thus, under 28 U.S.C. §2674, the United States is liable to Plaintiff for her damages resulting from the personal injuries sustained by Plaintiff and proximately caused by the employee of the United States Postal Service.

G. DAMAGES

12. As a direct and proximate result of the Defendant's negligence, Plaintiff suffered

the following injuries and damages:

- a. Physical pain and suffering in the past;
- b. Physical pain and suffering in the future;
- c. Mental anguish in the past;
- d. Mental anguish in the future;
- e. Physical impairment in the past;
- f. Physical impairment in the future;
- g. Physical disfigurement in the past;
- h. Physical disfigurement in the future;
- i. Reasonable and necessary medical care and expenses in the past; and
- j. Reasonable and necessary medical care and expenses in the future.

H. REQUEST FOR A JURY TRIAL

13. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby requests a trial by jury.

I. PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein; and that upon final determination of this cause of action, Plaintiff have and recover judgment against Defendant for the following:

- a. Actual damages in the amount of \$1,200,000.00;
- b. Costs of suit;
- c. Post-judgment interest; and
- d. All other relief the Court deems appropriate.

Respectfully submitted,

/s/ John M. Groce, Jr.

JOHN M. GROCE, JR.

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